Nur Rasidah bt Jamaludin v Malayan Banking Bhd and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS J-02(NCVC)(W)-319–02 OF 2015, J-02(NCVC)(W)-318–02 OF 2015, B-02(NCVC)(A)-1731–10 OF 2014, W-02(NCVC)-140–01 OF 2015 AND W-02(NCVC)(A)-826–05 OF 2015

LIM YEE LAN, VARGHESE GEORGE AND HARMINDAR SINGH JJCA

6 APRIL 2017

Civil Procedure — Judicial precedent — Decisions of the pre-1964 Court of Appeal — Whether present Court of Appeal was bound by decisions of pre-1964 Court of Appeal as that court was akin in stature to present Federal Court — Whether Courts of Judicature Act 1964 abolished then Court of Appeal and replaced it with Federal Court as apex court of country — Whether previous Court of Appeal of equal rank (court of co-ordinate jurisdiction) to present Federal Court

Tort — Defamation — Action against trade union — Commercial bank sued five of its employees for libel for distributing leaflets/flyers and making online publications disparaging of the bank — Action by employees was connected to on-going trade dispute between their union ('NUBE') and bank over alleged unfair labour practice — Whether employees concerned, NUBE and its officers were immune from being sued for libel under s 22 of the Trade Unions Act 1959 ('the TUA 1959') — Whether libel was not type of actionable tort envisaged under s 22 of the TUA 1959 — Trade Unions Act 1959 s 22

The sole issue in the appeals herein was whether s 22 of the Trade Unions Act 1959 ('the TUA 1959') afforded absolute immunity to five employees against an action for libel taken against them by their employer bank ('MBB'). The five employees ('Rasidah', 'Sharifuddin', 'Faisal', 'Solomon' and 'Sethupathy') were separately sued by MBB in the High Court for publicly making disparaging statements about the bank in connection with an alleged unfair labour practice that had become the subject of an on-going trade dispute between the National Union of Bank Employees ('NUBE') and MBB. The High Court had allowed the claims against Rasidah, Sharifuddin and Faisal but dismissed the claims against Solomon and Sethupathy. In the case of Rasidah, Sharifuddin, Faisal and Sethupathy, MBB had taken offence over their distribution of flyers or leaflets entitled 'Tyranny of Maybank'. In Solomon's case, MBB objected to two circulars that were published on NUBE's website entitled 'Maybank, Head of Human Capital is a Loose Cannon' and 'Maybank CEO — Looting Maybank'. The circulars were signed off by Solomon as NUBE's general secretary at the time. In the cases against Rasidah, Sharifuddin and Faisal the

High Court found that MBB had proved its claim against them and that the defendants were not immune from liability under the TUA 1959. The case against Sethupathy was dismissed because the court found that publication of the alleged defamatory material was not established and that he was also protected by the immunity under s 22 of the TUA 1959. On the same grounds of immunity, the court dismissed MBB's suits against Solomon and NUBE. At the joint hearing of the instant appeals, the five employees contended that s 22 of the TUA 1959 afforded them a complete defence against any defamation action for acts done in connection with an on-going trade dispute between NUBE and MBB. In support, they relied upon the decisions of the then Court of Appeal in the cases of *National Union of Plantation Workers & Ors v Abdul Hamid* [1963] 1 MLJ 78 ('Abdul Hamid') and *National Union of Plantation Workers v K Annamalai* [1959] 1 MLJ 9 ('Annamalai').

Held, allowing the appeals by Rasidah, Sharifuddin and Faisal, setting aside the decisions of the High Court in their appeals and dismissing MBB's appeals:

(1) Trade unions and their members or officers were absolutely immune from actions premised upon the tort of libel pursuant to s 22(1) of the TUA 1959 when the tortious acts complained of were 'committed by or on behalf of the trade union' (see para 24).

(2) The then Court of Appeal in *Annamalai* and *Abdul Hamid* decided that s 22(1) conferred an absolute immunity to a trade union and its members/officers from being sued for libel. In *Abdul Hamid*, which followed the amendments to s 22(2) of the TUA 1959, it was also held that libel was not a type of tort that fell within the ambit of s 22(2). The upshot of the decisions in the two cases was that it mattered not whether there existed a 'trade dispute' between the parties as the tort of libel was not a type of tort that was covered by s 22(2) (see paras 20–21 & 24).

(3) This court was bound by the decisions in *Annamalai* and *Abdul Hamid* as the then Court of Appeal ('CA') was akin to the present Federal Court. Prior to the coming into force of the Courts of Judicature Act 1964 ('the CJA'), the courts in the Federation of Malaya consisted of the High Court and the CA. The CJA abolished the CA and replaced it with the Federal Court as the apex court of the country. This court was not a court of coordinate jurisdiction or of equal rank with the CA although the label was the same. The court of coordinate jurisdiction would be the Federal Court. This was so as any party aggrieved by the decision of this court could appeal to the Federal Court (see paras 26–27).

(4) Even if the qualification in s 22(2) of the TUA 1959 applied in this case, the facts clearly showed the existence of a trade dispute at the material time between MBB and NUBE over the non-payment of performance bonuses to MBB's employees in Peninsular Malaysia, contrary to the situation in Sarawak. The existence of the trade dispute was conceded by

MBB. As the publication of the impugned documents were done pursuant to a 'trade dispute', the general immunity conferred by s 22(1) of the TUA 1959 was available to the defendants (see paras 28 & 30).

(5) MBB's contention that s 22 of the TUA 1959 did not apply as the suits were not representative actions was without merit. The defendants were not acting on a frolic of their own but were clearly acting on behalf of the trade union. The leaflets and the publication on NUBE's website were the work of the union and not the isolated work of any of the defendants. Their role, as disclosed by the evidence, was to distribute the leaflets published by their trade union. The defendants were clearly doing union work for which they could claim immunity under s 22 of the TUA 1959. The rationale for the immunity was that the Legislature recognised the need for trade unions and their members to be protected from legal action. Trade unions, by the very nature of their functions, were more than likely to offend some people who might then be minded to take legal action against them. The immediate consequence was that the funds of the unions, which came from the members who were mostly poor, would be at risk of being depleted due to such legal actions (see paras 17 & 31).

[Bahasa Malaysia summary

Satu-satunya isu dalam rayuan-rayuan ini adalah sama ada s 22 Akta Kesatuan Sekerja 1959 ('AKS 1959') memberikan kekebalan mutlak kepada lima pekerja terhadap satu tindakan untuk libel yang dimulakan terhadap mereka oleh majikan bank mereka ('MBB'). Kelima-lima pekerja itu ('Rasidah', 'Sharifuddin', 'Faisal', 'Solomon' dan 'Sethupathy') telah disaman secara berasingan oleh MBB di Mahkamah Tinggi kerana membuat secara terbuka kenyataan menghina tentang bank tersebut berkaitan amalan buruh yang tidak adil yang dikatakan telah menjadi perkara berhubung pertikaian perdagangan yang berterusan antara Kesatuan Kebangsaan Pekerja Bank ('NUBE') dan MBB. Mahkamah Tinggi telah membenarkan tuntutan terhadap Rasidah, Sharifuddin dan Faisal tetapi telah menolak tuntutan terhadap Solomon dan Sethupathy. Dalam kes Rasidah, Sharifuddin, Faisal dan Sethupathy, MBB telah melakukan kesalahan kerana mereka telah mengedar risalah-risalah bertajuk 'Tyranny of Maybank'. Dalam kes Solomon, MBB telah membantah terhadap dua pekeliling yang telah disiarkan dalam laman web NUBE yang bertajuk 'Maybank, Head of Human Capital is a Loose Cannon' dan 'Maybank CEO — Looting Maybank'. Pekeliling-pekeliling tersebut telah ditandatangani oleh Solomon sebagai ketua setiausaha NUBE pada ketika itu. Dalam kes terhadap Rasidah, Sharifuddin dan Faisal, Mahkamah Tinggi mendapati MBB telah membuktikan dakwaannya terhadap mereka dan bahawa defendan-defendan tidak kebal daripada liabiliti di bawah AKS 1959. Kes terhadap Sethupathy tidak dibuktikan dan bahawa juga dilindungi dengan kekebalan di bawah s 22 AKS 1959. Atas alasan kekebalan yang sama, mahkamah telah menolak guaman-guaman MBB terhadap Solomon dan

NUBE. Dalam perbicaraan bersama rayuan-rayuan ini, kelima-lima pekerja tersebut telah berhujah bahawa s 22 AKS 1959 telah memberikan mereka pembelaan lengkap terhadap apa-apa tindakan fitnah untuk perbuatan yang dilakukan berkaitan pertikaian perdagangan yang berterusan antara NUBE dan MBB. Sebagai sokongan, mereka bergantung kepada keputusan-keputusan Mahkamah Rayuan ketika itu dalam kes-kes *National Union of Plantation Workers & Ors v Abdul Hamid* [1963] 1 MLJ 78 ('Abdul Hamid') dan *National Union of Plantation Workers v K Annamalai* [1959] 1 MLJ 9 ('Annamalai').

Diputuskan, sebulat suara membenarkan rayuan-rayuan oleh Rasidah, Sharifuddin dan Faisal, mengetepikan keputusan-keputusan Mahkamah Tinggi dalam rayuan-rayuan mereka dan menolak rayuan-rayuan MBB:

(1) Kesatuan-kesatuan sekerja dan ahli-ahli atau pegawai-pegawai mereka benar-benar kebal daripada perbuatan-perbuatan yang berpremiskan tort libel menurut s 22(1) AKS 1959 apabila perbuatan-perbuatan yang bersifat tort itu diadukan telah 'committed by or on behalf of the trade union' (lihat perenggan 24).

(2) Mahkamah Rayuan ketika itu dalam kes *Annamalai* and *Abdul Hamid* memutuskan bahawa s 22(1) memberikan kekebalan mutlak kepada kesatuan sekerja dan ahli-ahli/pegawai-pegawainya daripada disaman untuk libel. Dalam kes *Abdul Hamid*, yang mengikut pindaan s 22(2) AKS 1959, ia juga memutuskan bahawa libel bukan jenis tort yang terjatuh dalam skop s 22(2). Kesudahan keputusan-keputusan dalam kedua-dua kes tersebut adalah bahawa ia tidak penting sama ada terdapat 'trade disute' antara pihak-pihak kerana tort libel bukan jenis tort yang diliputi oleh s 22(2) (lihat perenggan 20–21 & 24).

(3) Mahkamah ini terikat oleh keputusan-keputusan dalam kes-kes *Annamalai* dan *Abdul Hamid* kerana Mahkamah Rayuan ketika itu ('MR') adalah sama seperti Mahkamah Persekutuan sekarang. Sebelum Akta Mahkamah Kehakiman 1964 ('AMK') mula berkuat kuasa, mahkamah-mahkamah dalam Persekutuan Malaya terdiri daripada Mahkamah Tinggi dan MR. AMK telah memansuhkan MR dan menggantikannya dengan Mahkamah Persekutuan sebagai mahkamah tertinggi dalam negara. Mahkamah ini bukan mahkamah yang mempunyai bidang kuasa menyelaras atau pangkat yang sama dengan MR meskipun mempunyai label yang sama. Mahkamah yang mempunyai bidang kuasa menyelaras adalah Mahkamah Persekutuan. Ini adalah kerana mana-mana pihak terkilan dengan keputusan mahkamah ini boleh merayu kepada Mahkamah Persekutuan (lihat perenggan 26–27).

(4) Walaupun kelayakan dalam s 22(2) AKS 1959 terpakai dalam kes ini, fakta jelas menunjukkan kewujudan pertikaian perdagangan pada masa

matan antara MBB dan NUBE berhubung bonus-bonus prestasi yang tidak dibayar kepada pekerja-pekerja MBB di Semenanjung Malaysia, bertentangan kepada keadaan di Sarawak. Kewujudan pertikaian perdagangan yang diberikan oleh MBB. Oleh kerana penerbitan dokumen-dokumen yang dipersoalkan telah dilakukan menurut 'trade dispute', kekebalan am yang diberikan oleh s 22(1) AKS 1959 tersedia kepada defendan-defendan (lihat perenggan 28 & 30).

(5) Hujah MBB bahawa s 22 AKS 1959 tidak terpakai kerana guaman-guaman tersebut bukan tindakan-tindakan wakil adalah tanpa merit. Defendan-defendan tidak bertindak sendiri tetapi jelas bertindak bagi pihak kesatuan sekerja. Risalah dan penerbitan di laman web NUBE adalah kerja kesatuan dan bukan kerja yang terpencil oleh mana-mana defendan. Peranan mereka, sepertimana dizahirkan melalui keterangan, adalah untuk mengedar risalah-risalah yang diterbitkan oleh kesatuan sekerja mereka. Defendan-defendan jelas melakukan kerja kesatuan yang mana mereka boleh menuntut kekebalan di bawah s 22 AKS 1959. Rasional untuk kekebalan itu adalah bahawa badan Perundangan mengiktiraf keperluan untuk kesatuan sekerja dan ahli-ahli mereka dilindungi daripada tindakan undang-undang. Kesatuan sekerja, berdasarkan sifat sebenar fungsi mereka, lebih berkemungkinan menyinggung perasaan sesetengah orang yang mungkin ingin mengambil tindakan terhadap mereka. Akibat segera adalah bahawa dana kesatuan tersebut, yang datang daripada ahli-ahli yang ramai di kalangan mereka miskin, akan mengalami risiko berkurangan akibat tindakan undang-undang sedemikian (lihat perenggan 17 & 31).]

Notes

For cases on action against trade union, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 401–402.

For cases on judicial precedent in general, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5891–5932.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345, FC (refd)

Dynamic Plantations Berhad v YB Menteri Sumber Manusia Anor Kesatuan Kebangsaan Pekerja-Pekerja Ladang [2010] MLJU 8, FC (refd)

National Union of Plantation Workers & Ors v Abdul Hamid [1963] 1 MLJ 78, CA (folld)

The National Union of Plantation Workers v K Annamalai [1959] 1 MLJ 9, CA (folld)

Vacher & Sons, Limited v London Society of Compositors [1913] AC 107, HL (refd)

Legislation referred to

Courts of Judicature Act 1964 s 42(1)
Industrial Relations Act 1967
Trade Unions Act 1959 ss 2, 22, 22(1), (2)
Trade Unions Enactment 1940 (repealed by Trade Unions Act 1959) s 21, 21(1), (2)
Trade Unions Ordinance 1959 (repealed by Trade Unions Act 1959)

Alex De Silva (Gajendran Balachandran with him) (Bodipalar Ponnudurai De Silva) for the appellants in Civil Suit Nos 318–02 of 2015, 319–02 of 2015 and 1731–10 of 2014
M Pathmanathan (Rutheran Sivagnanam and Shirin Pathmanathan with him) (R Sivagnanam & Assoc) for the appellants in Civil Suit Nos 140–01 of 2015 and 826–05 of 2015.

Harmindar Singh JCA (delivering judgment of the court):

[1] There are five appeals before us. These appeals were ordered to be heard together. These appeals arose from libel actions filed by Malayan Banking Bhd ('the bank') against the various defendants in five separate cases. Appeal Nos 319–02 of 2015 ('Rasidah') and 318–02 of 2015 ('Sharifuddin') arose from two suits heard together in the Johor Bahru High Court. The High Court had allowed the bank's claim for defamation against both defendants.

[2] Appeal No 1731–10 of 2014 ('Faisal') arose from a defamation suit filed by the bank against the defendant in the Shah Alam High Court. The High Court had allowed the bank's claim. Appeal No 140–01 of 2015 ('Solomon') arose from a suit filed by the bank for defamation in the Kuala Lumpur High Court. The High Court had dismissed the bank's claim against the defendants. Finally, Appeal No 826–05 of 2015 ('Sethupathy') also arose from a defamation suit filed by the bank in the Kuala Lumpur High Court. The High Court had also dismissed the bank's claim against the defendant.

[3] These appeals were heard together on 10 August 2016. After hearing the parties and taking into consideration the written submissions, we allowed the appeals by the defendants in the civil actions before the High Court and dismissed the appeals by the bank. Our full reasons for doing so now follow and constitutes the judgment of the court. For convenience the parties will be referred to as they were in the High Court or by the respective abbreviations.

BACKGROUND

[4] The relevant facts giving rise to the civil suit can be stated as follows. In the cases of Rasidah, Sharifuddin, Faisal and Sethupathy, the bank took offence

to flyers or leaflets distributed by the defendants. The leaflet in question was entitled 'Tyranny of Maybank'. In view of the agreed sole issue raised by the parties in these appeals, we are spared from delving into the fine details of what the bank alleged to be a campaign of hate against the bank. Suffice it to say, for the purposes of these appeals, that the leaflets contained material which was not complimentary of the bank and was certainly disparaging of it.

[5] In the Solomon case, the bank took objection to two circulars published on the National Union of Bank Employees ('NUBE') website. The two circulars were entitled 'Maybank, Head of Human Capital is a Loose Cannon' and 'Maybank CEO — Looting Maybank' ('the impugned circulars'). These two circulars were published by NUBE, the first defendant in that suit and signed off by its general secretary, Mr Sandagran Solomon, the second defendant. The contents of the impugned circulars were highly damaging of the bank and two of its senior officers. One of the allegations which stood out, as the title of one of the circulars suggests, was that the CEO was looting away the funds of the bank with his high salary whilst the normal employees were treated unequally.

[6] In Faisal, Rasidah and Sharifuddin, the actions concerning the leaflets, the High Court there held that there had been a defamatory publication, the words related to the bank, the immunity asserted under the Trade Unions Act 1959 ('the TUA 1959') did not apply and no other viable defences were established. In the other case involving the said leaflets, the Sethupathy case, the High Court held that publication of the leaflet was not established. The court also held that the evidence was indicative of a trade union dispute which would entitle the defendant to rely on the immunity under s 22 of the TUA 1959. In the case involving the impugned circulars, the case of Solomon and NUBE, the High Court held that the defendants were protected by the immunity afforded by s 22 of the TUA 1959.

THE INSTANT APPEALS

[7] Before us, the parties had magnanimously agreed that there is only one issue to be decided for all the appeals. The issue was whether the defendants in the libel actions brought by the Bank enjoyed absolute exemption from liability under s 22 of the TUA 1959. This issue therefore necessitates a critical examination and interpretation of s 22 of the TUA 1959, which section appears as follows:

> 22(1) A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.
>
> (2) Nothing in this section shall affect the liability of a trade union or any trustee or

officers thereof to be sued in any court touching or concerning the specific property or rights of a trade union or in respect of any tortious act arising substantially out of the use of any specific property of a trade union except in respect of an act committed by or on behalf of the trade union in contemplation or furtherance of a trade dispute.

[8] Before we deal with the respective positions taken by the parties with respect to the application of s 22 of the TUA 1959, it is necessary to set out some background to this particular provision. The law relating to trade unions in this country was initially contained in the Trade Unions Enactment 1940 ('the 1940 Enactment'). Section 21 of that Enactment, which is relevant to the present appeals, provided as follows:

21(1) A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by the Court.

(2) Nothing in this section shall affect the liability of a trade union or any officer thereof to be sued in any Court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute.

[9] In 1959, the Legislature enacted the Trade Unions Ordinance 1959 which was later revised in 1981 and is now referred to as the Trade Unions Act 1959 (Act 262) ('the TUA 1959'). Section 21 of the 1940 Enactment was replaced by s 22 of the TUA 1959 which contained some changes. These changes, together with the background to the law relating to trade unions in this context, were well set out in the judgment of Thompson CJ (as he then was) in *National Union of Plantation Workers & Ors v Abdul Hamid* [1963] 1 MLJ 78. The changes were noted by Thompson CJ as follows (at p 80):

It will be observed that sub-s (1) is the same as the old sub-s (1) and the same as sub-s (1) of s 4 of the Trade Disputes Act 1906. But in sub-s (2) there are three changes from s 21 of the 1940 Enactment. The words 'or any trustee' have been inserted after the words 'trade union' where these words first occur; the word 'specific' has been inserted before the word 'property' where it first occurs; and the words 'or in respect of any tortious act arising substantially out of the use of any specific property of a trade union' have been inserted after the words 'trade union' the second time these words occur.

[10] Now learned counsel for the bank has forcefully argued that s 22 of the TUA 1959 confers a defined scope of immunity which does not apply to the circumstances that prevail in the instant cases. It was contended that the provision's application is limited to a case when the suit is in the form of a representative action. Hence the words 'and all other members'. It was accordingly submitted that where the suit is not a representative suit, s 22(1)

A does not apply and the member or officer being sued stands no differently from any ordinary employee or litigant. In other words, he or she is not clothed with immunity in respect of his own acts.

B **[11]** It was further contended that s 22(2) detracts from s 22(1) and introduces a specific immunity when a relevant party acts in furtherance of a trade dispute. This is denoted by the words: 'in respect of any tortious act arising substantially out of the use of any specific property of a trade union'. In this situation the immunity can only be asserted where the exception comes into operation ie 'in respect of an act committed by or on behalf of the trade C union in contemplation or furtherance of a trade dispute'.

[12] It was also argued that trade unions, their members and officials are only immune where the tort is committed in contemplation and in furtherance D of a trade dispute — mere existence is not enough. The union must be bona fide acting in contemplation and/or furtherance of a trade dispute. Parliament could not have intended to confer immunity on a sham.

E **[13]** In the case of the tort of libel, reference was made to the legislative intent where a speech by Attorney General TVA Brodie during the debate of the Trade Unions Bill 1959 was referred to as follows:

> I should point out that although sub-clause (1) of Clause 22 pro provides that no proceedings shall be brought against a trade union or its officers in respect of any F tortious act, this is expressly qualified by sub-clause (2) which says that nothing in the section shall affect the liability of a trade union or its officers to be sued in certain circumstances. What we have done is, by amending sub-clause (2), to add the circumstances in which a trade union can be sued. What we had in mind, of course, were the cases where the tortious act arises principally or mainly out of the use of the property of a trade union ... Finally, we thought, when we drafted this particular G provision, that it would cover the case of a libel printed by a printing press owned by a trade union. That is the interpretation that those who drafted this amendment place on those words. Whether that interpretation will be accepted by the Court is of course, a matter which one cannot be certain about (see: Federation of Malaya, Legislative Council Debates, 23rd April 1959 at pp 6755–6779 at p 6774).

H

[14] It was finally asserted that legislation seeking to deprive an aggrieved party of its basic and fundamental right to seek redress before a court of competent jurisdiction must be subjected to a very strict and narrow interpretation. Since 'all persons should stand before the law on an equal I footing any statute that grants special rights to certain individuals should be strictly construed against the statutory beneficiary' (see: NS Bindra's *Interpretation of Statutes* (9th Ed) at p 292).

[15] Learned counsel for the defendants, on the other hand, contended that

s 22(1) confers on the defendants a general immunity against any tortious act including the tort of libel. Relying on the authority of *National Union of Plantation Workers & Ors v Abdul Hamid* ('Abdul Hamid') and *The National Union of Plantation Workers v K Annamalai* [1959] 1 MLJ 9 ('Annamalai'), it was submitted that s 22(1) of the TUA 1959 conferred on the defendants a complete defence against any defamation action as a registered trade union and officers/members of the trade union respectively.

[16] It was also argued that even if s 22(2) applies to libel actions, the defendants are still immune as the impugned documents were published by the trade union pursuant to an ongoing trade dispute between the trade union and the bank.

OUR DECISION

[17] In arriving at our decision, it is instructive to appreciate at the outset the rationale for having the immunity provision in the form of s 22 of the TUA 1959. The Legislature had recognised the need for trade unions and its members to be protected from legal action. Trade unions, by the very nature of their functions, are more than likely to offend some people who may then be minded to take legal action against them. The immediate consequence is that the funds of the unions, which come from the members who are mostly poor, will be at risk of being depleted due to such legal actions.

[18] In this respect, the common law position of immunity for associations and bodies was noted by the House of Lords in *Vacher & Sons, Limited v London Society of Compositors* [1913] AC 107 where Lord Macnaghten observed (at p 118):

> Now there is nothing absurd in the notion of an association or body enjoying immunity from actions at law. Some people may think the policy of the Act unwise and even dangerous to the community. Some may think that it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament or to pass a covert censure on the Legislature.

[19] Coming now to the arguments raised, the pivotal question that requires an answer at the outset is whether the tort of libel is a type of tort that is envisaged by s 22 of the TUA 1959 and more particularly s 22(2). The jurisprudence in this respect is covered by two cases of the higher courts dealing specifically with s 22 of the TUA 1959, namely, the cases of *Annamalai* and *Abdul Hamid*, as alluded to earlier.

A **[20]** The case of *Annamalai* was a decision of the then Court of Appeal. It was decided based on s 21 of the then 1940 Enactment. It was therefore decided prior to the amendment which appeared in s 22(2) of the TUA 1959. The Court of Appeal decided that unlike actions for trespass, trover and detinue, for example, an action for libel does not touch or concern the property B or rights of a trade union as required by the then s 21(2). We therefore agree that this case is authority for the proposition that s 21(1) confers general blanket immunity against any libel action against a trade union or its members/officers.

C **[21]** As revealed earlier, s 22(2) of the TUA 1959 was amended a year after the decision in *Annamalai*. The question of whether the amended s 22(2) applied to the tort of libel was considered soon after by the Court of Appeal in *Abdul Hamid*. The changes to s 22(2) were noted by Thompson CJ as set out D earlier. The Court of Appeal then, having considered the amendments to s 22(2) of the TUA 1959, decided that the addition of several words to the section did not change the general legal position of the section, in that a trade union or any officer of a trade union shall not be sued for the tort of defamation. It was observed that s 22(1) of the TUA 1959 conferred an E absolute immunity to a trade union and its members from being sued for libel. The Court of Appeal also concluded that libel is not a type of tort that the falls within the ambit of the qualification introduced under s 22(2) of the TUA 1959.

F **[22]** In a nutshell, Thompson CJ explained that the effect of s 22(2) was to distinguish between:

(a) torts where liability arises from ownership of property and for which the trade union is liable to be sued; and

G (b) torts which arise otherwise than from ownership of property and for which the trade union is not liable to be sued.

[23] Thompson CJ went on to hold that libel is not a type of tort that arises from ownership of property. In deciding whether the qualification introduced H by s 22(2) of the TUA 1959 applied or not, Thompson CJ pronounced as follows (at p 81):

> So considered it is clear that the words 'arising substantially out of the use of any specific property' do not qualify the words 'tortious act' but qualify the word 'liability'. Thus the true dichotomy is between torts where the liability arises from I ownership of property and for which the union is liable to be sued and torts which arise otherwise than from ownership of property and for which the union is not liable to be sued. Libel clearly falls within the second of these classes ...

[24] The upshot of the above two decisions is that it matters not whether

there exists a 'trade dispute' between the parties as the tort of libel is not a type of tort which is covered by s 22(2) of the TUA 1959. The general immunity conferred by s 22(1) applies to the tort of libel and hence the defendants here cannot be held liable for the impugned documents published by the trade union. In short, trade unions and its members or officers have absolute immunity from actions that are premised upon the tort of libel pursuant to s 22(1) of the TUA 1959 when the tortious acts complained of were 'committed by or on behalf of the trade union'.

[25] We have been urged by learned counsel for the bank to depart from these decisions based on the arguments raised as set out at the outset. It was argued that the legislative intent ought to be considered and the debate speech in 1959, as alluded to earlier, was cited in support. In this respect, we agree that reference to parliamentary reports as an aid to interpretation is permissible. However, the circumstances in which such reference could be made were circumscribed by the Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 where it was held (at the headnotes):

> In construing a statute, a reference to Parliamentary reports of proceedings or *Hansard*, as an aid to statutory interpretation, should be permitted where the enactment is ambiguous or obscure, or which if literally construed might lead to an absurdity, provided that the statement reported in the Hansard was made by a Minister or other promoter of a Bill. However, *Hansard* was only an aid to interpretation and could not be determinative of the issue for that would amount to substituting the words of the Minister or promoter of the Bill for the words of the statute. In this case, the Ministerial statement reported in Hansard did not assist the court at all.

[26] Similarly, in the instant case, we were unable to see how the speech referred to could provide any assistance in interpreting s 22 of the TUA 1959. The Court of Appeal in *Abdul Hamid* interpreted s 22 after it was amended when the TUA 1959 came into force and we found no reason to disagree. In fact, we are bound by the decisions of the then Court of Appeal. It must be noted that *Annamalai* (1959) and *Abdul Hamid* (1963) are both cases of the Court of Appeal that was in existence prior to the coming into force of the Courts of Judicature Act 1964 ('the CJA 1964').

[27] Prior to coming into force of the CJA 1964, the courts in the Federation of Malaya consisted of the High Court and the Court of Appeal. The CJA 1964 abolished the Court of Appeal and replaced it with the Federal Court as the apex court of the country. It must follow that the Court of Appeal then was akin to the present Federal Court. It is also plain that this court is not a court of coordinate jurisdiction or of equal rank with the previous Court of Appeal although the label is the same. The court of coordinate jurisdiction would be the Federal Court. This is so as any party aggrieved by the decision of this court

A can appeal to the Federal Court. With respect, the Privy Council could not be characterised as the apex court of the country.

[28] Accordingly, what we have observed so far would be sufficient to dispose of the appeals before us. For the sake of completeness, we should add B that even if the qualification in s 22(2) applied in this case, we agree with the finding of the learned Judges in the cases of Solomon and Sethupathy that there was an ongoing trade dispute. This would be significant as if the publication of the impugned documents were done pursuant to a 'trade dispute', then the C general immunity conferred by s 22(1) of the TUA 1959 would be available to the defendants.

[29] In this context, the term 'trade dispute' is defined in s 2 of the TUA 1959 as being any dispute 'between an employer and his workmen which is D connected with the employment or non-employment or the terms of employment or the terms of employment or the conditions of work of any such workmen'. The Federal Court in *Dynamic Plantations Berhad v YB Menteri Sumber Manusia Anor Kesatuan Kebangsaan Pekerja-Pekerja Ladang* [2010] MLJU 8 held the definition of 'trade dispute' as defined in the Industrial E Relations Act 1967 ('the IRA') is very wide and would include any dispute 'connected with employment'. The Federal Court also opined that this was 'sensible because the objective of the IRA is to confer on the Industrial Court power to sort out issues between the employee and the employer'.

F **[30]** The relevant facts surrounding the instant cases clearly highlight the existence of a trade dispute at the material time between the bank and NUBE. The dispute had arisen as a result of the non-payment of performance bonuses to the bank's employees in Peninsular Malaysia, contrary to the situation in Sarawak. NUBE began corresponding with the bank on this issue in June G 2009. NUBE took the position that this was an unfair labour practice and declared a trade dispute on this issue with the bank. The matter was then referred to the Industrial Relations Department by the bank. It matters not that the Industrial Court decision, which favoured the trade union, was subsequently quashed by the High Court. What is determinative is that there H was a trade dispute at the material time, the existence of which was conceded by the bank.

[31] On the issue of the suit not being a representative suit and hence the non-application of s 22(1), we were of the view that this contention is without I merit. The defendants in this case were not acting on a frolic of their own. They were clearly acting on behalf of the trade union. The leaflets and the publication on the website were the work of the union and not the isolated work of any of the defendants. Their role, as disclosed by the evidence, was to distribute the leaflets published by their trade union. In short, the defendants

were clearly doing union work for which they could claim immunity under s 22 of the TUA 1959.

[32] On the last question of the bank being unfairly denied a remedy, it may well be in the public interest to protect trade union funds, as we had observed earlier. It is really a matter for Parliament as to whether the law as it stands ought to be retained or altered. On this issue, we note with agreement the sentiments expressed by Thomson CJ in *Annamalai* some 57 years ago (at p 13):

> I would, therefore, allow the present appeal with costs and would only add that I express no opinion as to the justice or expedience of the law as it has been stated. It may be in the public interest that trade unions should be at liberty to libel individuals, possibly humble individuals, with impunity. Again that may not be in the public interest. The question is not one on which the courts should express any view. It is a question for the Legislature. If the law is thought to be a good law no doubt it will remain. If it is thought to be a bad law no doubt it will be altered.

CONCLUSION

[33] In the circumstances, and for the reasons we have given, we were of the view that the decisions of the High Court given in favour of the bank were plainly wrong as a result of which appellate intervention was warranted. Accordingly, in respect of the appeals by Rasidah, Sharifuddin and Faisal, we allowed the appeals and set aside the orders of the relevant High Court with costs here and below fixed at RM130,000 subject to payment of allocator fees. The other two appeals by the bank were dismissed with costs of RM10,000 in each case subject to payment of allocator fees. We also ordered the refund of the deposits to each of the appellants.

[34] Finally, this judgment is prepared pursuant to s 42(1) of the Courts of Judicature Act 1964 as our learned brother Varghese George has since retired.

Order accordingly.

Reported by Ashok Kumar